



Appeal Decision

Site visit made on 04 December 2020

by Kim Langford Tejrar LLB (Hons) BSc (Hons) PGDIP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2020

Appeal Ref: APP/T0355/W/20/3258731

8 Wraysbury Road, Staines upon Thames TW19 6HE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms F Caviezel against the decision of Royal Borough of Windsor and Maidenhead
 - The application Ref 20/01219, dated 28 May 2020, was refused by notice dated 08 June 2020
 - The development proposed is 'siting of a mobile home to be used as ancillary residential accommodation (in particular as a granny annex). Retrospective application'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development was amended following submission of the application to "*Siting of a mobile home to be used as ancillary residential accommodation*".
3. Neither the original description nor the amended description amounts to 'development' subject to planning control within the meaning of Section 55 of the Town and Country Planning Act 1990. Section 55 defines development as either a building operation or a material change in use of land. The proposal does not relate to a building operation. Moreover, siting of a residential mobile home for use ancillary to the existing residential use would not amount to a material change of use of land.
4. As such, there is no requirement for planning permission for such a proposal and I could not allow the appeal to grant a planning permission even if I were to agree entirely with the Appellant's case¹.
5. The Council's case is that the proposal is not a mobile home, but a building operation and that it is in separate residential use, amounting to a material change of use of land. This is, however, not reflected in the description.
6. Given that the Appellant's case is made on the basis that planning permission is not required, it would prejudice the interests of the parties to seek agreement to alter the description of development to something which does amount to 'development'. The correct course of action would be to determine

¹ I reach no such conclusion.

the lawfulness of the proposal under Section 191 of the Town and Country Planning Act 1990² (the Act). However, this appeal is made under Section 78 of the Act, rather than Section 195 and to determine the appeal otherwise would also prejudice the interests of the parties. For these reasons, this appeal is entirely abortive.

7. Neither party has made an application for costs, nor have I made a separate decision to award costs against either party. The Appellant made an incorrect application and brought this abortive appeal. Whilst the Appellant's agent claims the application was made following the Council indicating it had predetermined to refuse any appropriate application under Section 191 of the Act, the Appellant was professionally advised at both application and appeal stages. The Council missed the opportunity to correctly advise the applicant as to the description of development and proceeded with the application with an equally incorrect amended description. The Council did not direct the Appellant to the correct application type. The Council also determined the application ref. 20/01219 in a very short time by making a Section 191 assessment. The Council further made its assessment with what appears to be a lack of evidence, lending credence to the Appellant's concern regarding pre-determination. My decision not to produce a separate costs decision is made solely on the limited information before me regarding how this regrettable appeal came about.
8. I have outlined the arguments made by the parties below and provided by observations from the site visit. This is done without drawing conclusions or prejudicing the determination of any future applications or appeals.

Main Issues

9. The main issues are the planning status of the proposal.

Reasons

Description of Development

10. The Procedural Matters section above sets out the main reason for this decision.

Caravan or building operation

11. Mobile homes normally constitute a use of land, even when they may be in permanent or semi-permanent residential use³. The Council suggests the proposal is a building operation, not a caravan, and is therefore incapable of being given planning permission as 'siting of a mobile home', regardless of whether its use amounts to a material change of use.
12. The proposal is a standard sized single-wide mobile home. The Council acknowledges it would comply with the relevant dimensions for the definition of a mobile home within the Caravan Sites and Control of Development Act 1960 but as it is sited on a 'raised platform', it cannot meet the relevant size criteria. No such platform is shown on application plans as part of the caravan structure. During my visit I observed the mobile home to be situated on a ground-level concrete slab.

² Though a proposal does not require a certificate to be issued under Section 191 in order to be lawful.

³ [1996] JPL 435, [1996] JPL 618 and [1999] JPL 182.

13. The Council states there is insufficient evidence that the mobile home is not of a permanent construction⁴. During my site visit I observed the mobile home to be sited on the concrete slab, with its wheels still in situ and temporary connections to services were provided from the main dwelling. Gas bottles were also in situ behind the mobile home. There was no brick skirt or other construction. The door was accessed by loose stacked breeze blocks.
14. The Appellant's agent has provided evidence of the mobile home being transported to the site on the back of a lorry in the appeal statement⁵. This information does not appear to have been previously available to the Council. During my site visit, I did not observe any alterations to the mobile home which would prevent its being transported in this manner.

Separate residential use

15. The Council observes the proposal is 'tantamount to separate residential use'. It is the actual use of the mobile home which would be determinative. The basis of this conclusion is not clear, and there is no evidence before me to suggest the mobile home is being used other than in the manner described in the application and appeal documents. The appeal documents state that the mobile home is occupied by the Appellant and the dwelling is occupied by her family.
16. During my site visit, I observed a fence separating the rear garden area of the mobile home and dwelling. The fence did not continue across the site and the mobile home and dwelling were open to the front, in one enclosure.
17. The Council goes on to assess the proposal as a new dwelling against the policies of the Development Plan. Should I have agreed with the Council⁶ that the proposal is for a new dwelling, the development description is not. I could not grant planning permission for a new dwelling by allowing this appeal.

Other Matters

18. The Appellant has outlined personal circumstances in support of their appeal. Whilst a material consideration for a planning application, the appeal remains abortive for the reasons outlined above.

Conclusion

19. For the reasons stated above, I find that the appeal proposal as described is not development within the meaning of Section 55 of the Town and Country Planning Act 1990. It is not possible to amend the description without changing the nature of the appeal thereby prejudicing the interests of the parties. As such, the appeal must be dismissed.

Kim Langford Tejrar

INSPECTOR

⁴ [2005] EWHC 691.

⁵ [1996] JPL B124, [1991] JPL 131.

⁶ I reach no such conclusion.